

United States District Court
Western District of New York

Everett Jones #01A5636

Plaintiff

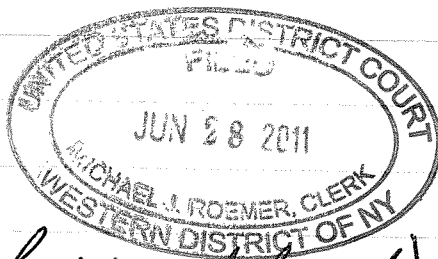
- against -

10-Civ00823 (H.K.S.)

Superintendent of Attica C.F.

Cochran Sgt, R.N. Houlley

Defendant



(Plaintiff memorandum of law in support
of his motion for summary judgement)

#Point 1 (Table of Contents)

- 1) Preliminary Statement
- 2) State ment of Facts
- 3) Defendant was aware of a foreseeable problem.

#Point 2

Defendant is aware that this is a max A facility
with Dangerous inmate and the facility should be
Secured by all means to prevent harm from others.

#Point 3

Defendant is and was aware of my medical needs
But did not attend to them adequate medical attention

United States District Court
Western District of New York

Everett Jones #01A5636

Plaintiff

10 Civ 00823 (H.K.S.)

- against -

Superintendent Attica C.F.

Sgt. Cochran, R.N Hawley

Defendant

Plaintiff memorandum of law in support
of motion for Summary judgement.

Pro Se Plaintiff Everett Jones a prisoner currently incarcerated
was incarcerated at Attica Correctional Facility alleges that his
Constitutional rights were violated on the 30th day of July 2009
while house at the above facility specifically, alleges that the defendant
Sgt. Cochran of B-Block at Attica C.F. was on notice of a
foreseeable problem with other inmate as well plaintiff alleges
Defendant Superintendent fail to acknowledge the reported
complaint of a foreseeable problem as well Defendant Superintendent
fail to seek and maintain proper safety measure to prevent
harm from others and supply enough officers while recreation
is being ran/Conducted Plaintiff also alleges
Defendant R.N Hawley did not supply adequate medical
attention for burn's on body from hot water 190°
Plaintiff Everett Jones now moves for Summary judgement
Pursuant to Fed R. Civ P. 56 on the following grounds.

- 1) Defendant was aware of a known and foreseeable problem and fail to act like a reasonable prudent person in a similar situation
- 2) Plaintiff has the right to be free from prison assault by staff or inmate when the state takes a person into its custody and holds him there against his will the Constitution impose upon it a corresponding duty to assume some responsibility for his safety and well being the rational for this principle is simply enough when the state by affirmation exercise of its power so restrains an individual's liberty that it renders him unable to provide care for himself and at the same time fails to provide for his basic human needs. ect... food, clothing shelter, medical care and reasonable safety it transgresses the eighth amendment (see Supreme ruling) Free from prison Prison assault Prisoner rights fourth Edition Book #1. 3:35
- 3) Plaintiff Claims that (Attica C.F) has #1 metal detector in each block housing area that are not being used during recreational activity time and weapons are being permitted into the yard area which created a duty of breach in security and the safety and life of others.
- 4) Plaintiff was assaulted by 4 four inmate's plaintiff face was slash by a razor and was stable with a shank in the torso area of the body and burn with hot water 190° and this Court should exercise compensatory judgement for plaintiff injury under the eighth amendment

(Statement of Facts)

The Court is respectfully referred to plaintiff local rule 56. Statement of material facts entered 10/19/2010 at 3:05 PM E.D.T and filed on 10/18/2010 Jones v Superintendent of Attica C.F. et. al. for Summary judgement for the statement of those material facts which are not in dispute and which this motion is based please see Photo Grievance and attach Claim.

(Argument Standard of review)

Summary judgement should be granted if the pleading material on file and any affidavit shows that there is no genuine issue to not grant Summary judgement base on material facts and the movant is entitle to judgement as a matter of law." Fed. R. Civ. P 56. in considering a Summary judgement motion the Court must view the evidence in the light most favorable to the moving party and draw all reasonable inferences in it favor of the moving party. One (Plaintiff) has Carried his burden under Rule 56. The defendant may not rely merely on allegations or Denials in his own pleadings but must by affidavit or as other wise provided in rule 5 set out specific facts showing a grievance issue for trial. Fed R. Civ P. 56. in so doing plaintiff must show and produce specific facts indicating that a factual issue exist See: (Photo inside Complaint) if the evidence is merely colorable or is significantly probative Summary judgement may be ~~not~~ granted.

Point #1Plaintiff has Exhausted his
Administrative Remedies

Under the prison litigation reform act (P.L.R.A) 42 U.S.C 1997e, prisoners are required to exhaust all available administration remedies bringing a federal action.

Plaintiff has done so (See Attach to Complaint) Plaintiff State life is in danger and the administration has already on notice and Superior officers fail to act on the problem to prevent the assault from happening by all means Grievance Number A55643-09 Summary judgement for the plaintiff should be granted in full by the Court.
(Point #2)

Defendant has aware that the facility is a MAX A Facility with inmate with asaultive dangerous perspnality's And there should be adequate officer on duty to secure the facility. Plaintiff Claims that Defendant was on notice of the foreseeable problem with plaintiff and other inmate. Defendant is the Superior officer of this facility on date of incident and there before and after numerous assaults have Accured and many other inmate was slash and stabble And killed being that the security measures are being taken lightly Creating the duty of Breach it is clear that under the Constitution when a person is in Custody and held gaibt his will the Constitution impose upon it corresponding duty to assure some responsibility for his safety and well being under eighth amendment right

See (Blake v State) 686 NYS 2d 219, 256, Ad 2d 878 (3d Dept 1999) State held to be negligent for failure to take measures to properly protect Claimant from Another inmate with known history of abusive Behavior. This establish Plaintiff Claims as a matter of Law the Court Should grant Summary judgement for Plaintiff.

Point #3

Defendant was aware of Plaintiff medical needs But fail to give Plaintiff adequate medical care.

Plaintiff Complaint also alleges that medical staff Member didn't supply adequate medical care for injury & Grievance #A55695-09 Plaintiff was given Preparation-H which is a ointment for the anal rectum area and not for burns. See (MacCracken v State) 277A.D. 1160, 101, N.Y.S. 2d 591 (4th Dept 1950) State held liable for negligence of prisoner doctors because the State has a duty to protect and preserve the health of inmates (Jacques v State) 127 Misc. 2d 769, 487 N.Y.S. 2d 463, 466 (Ct. of Claim) 1984 - failure to give post operation antibiotic constituted malpractice this clearly establish a violation of Plaintiff rights and Summary judgement should be place in full on the above grounds on behalf of Plaintiff further Complaint was made by Dick Call in the facility nothing was given to receive proper medical care the defendant

Was deliberately independent.

(Conclusions)

Based on the foregoing plaintiff respectfully request
that his motion for Summary judgement be granted
And that the courts grant plaintiff such relief as seems
just and proper

Date: New York County
of C

This 24 day of June 2011

Everett Jones #07A5636
Southport Correction Facility
P.O. Box 2000
Pine City Ny 14871-2000

United States District Court
Western District of New York

Everett Jones #01A5636
Plaintiff

- against -

Superintendent of Attica C.F
Sargent Cochran R.N. Whalley
Defendant x

10 Civ 00823 (HKS)

Affirmation of Service

I Everett Jones x Declare under penalty of perjury
that I have serve a copy of the attached. Motion
Memorandum of Law.

Upon Attorney General, whose address is State of New York
Office of the Attorney General Buffalo Regional Office main floor
Tower, 350 Main Street, Suite 300A. Buffalo, NY 14202-3699

Dated: Pine City, NY
(City) (State)

June, 24, 2011
(Month) (Day) (Year)

Signature: Everett Jones #01A5636
Address: Southport Correctional Facility
Box 2000

City State: Pine City, NY
Zip Code: 14871-2000